

SPEAKER NICHOL: The Warner first amendment is adopted. Now we are going back to the Warner second amendment. (See page 2572 of the Legislative Journal.) Senator Warner, did you wish to speak any further on your second amendment now?

SENATOR WARNER: Well, again, the point is only this that in both cases they have completed the preconference...pretrial conference in the court. Some attorney may have to help me, but from my understanding as a result of the preconference, the recommendation of our attorney, which is like any other individual or organization, is a settlement is probably a wise thing to do. I would suggest that it is wise probably to follow the advice of our attorney who apparently believes that this is the least expensive way to go. The probability of winning is risky enough that it is not worth trying as a result of the preconference...pretrial conference that has been completed. If somebody needs a better explanation of what occurs in a pretrial conference, Chris or somebody would have to do that because I can't spell that out.

SPEAKER NICHOL: Senator Beutler, would you like to speak on the Warner second amendment, please.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I just wanted to ask a couple of questions of Senator Warner that I'm not sure are entirely fair, except that my interest in this particular case has been piqued by the report to me that the problem was, and the reason that we are settling this case is that the county workers exercised bad judgement in placing a particular person in a foster care home. Of course, when you are talking about a judgement question you are talking about sovereign immunity, you get involved in the questions of sovereign immunity and whether the sovereign immunity doctrine doesn't preclude that kind of liability on the state's part because of the discretionary action rule. The reason that is of interest to me, of course, is because these are precisely the same doctrines that we are dealing with in the Commonwealth matter. I guess I would ask if you knew, Senator Warner, and again I recognize that this may not be entirely fair, is the Attorney General making the decision that the discretionary doctrine provision of the sovereign immunity law is not applicable? That is too technical I suppose. I'm going to check on that, but this is an interesting case in light of Commonwealth being in front of us this year.